

1 United States of America,)
2)
3 Plaintiff,)
4 v.) No. CR-10-0752-DLJ
5 Wilma Servando Cox,) **ORDER Re: Pre-Judgment**
6 Defendant.) **Interest**
7 _____)

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9 On February 8, 2011 defendant Wilma Cox ("Cox) pled guilty
10 to one count of theft of government property in violation of 18
11 U.S.C. § 641. Cox pled guilty pursuant to a Rule 11(c)(1)(C)
12 plea agreement. This agreement provided for a sentence of
13 three years probation, and payment by defendant of \$16,229.20
14 in restitution. On May 17, 2011 the Court sentenced defendant
15 in accordance with the terms of the plea agreement.

16 At the sentencing, the government put forward for the
17 first time the victim's request for pre-and post-judgment
18 interest in accord with 18 U.S.C. §3612(f). Because defendant
19 had not had an opportunity to address this request, the Court
20 held the issuance of interest in abeyance pending briefing on
21 that specific topic by the parties. The briefing has now been
22 concluded and the Court finds the following on the issue of
23 interest on the restitution.

24 The government asserts that pursuant to 18 U.S.C.
25 § 3663A(c)(1) the victim is entitled to restitution for his
26 loss, and that the Ninth Circuit has recognized that part of a
27 victim's actual loss includes pre-judgment interest. United
28 States v. Smith, 944 F.2d 618, 625-26 (9th Cir. 1991); see also

1 United States v. Catherine, 55 F.3d 1462, 1465 (9th Cir. 1995).

2 Defendant argues that as the plea agreement sets the
3 amount of restitution at \$16,229.20, the Court may not award
4 interest which would exceed that amount. However, the Ninth
5 Circuit has held that a victim is entitled to pre-judgment
6 interest. See United States v. Smith, 944 F.2d at 626.

7 ("[There] is no language in the Act that specifically allows or
8 forbids prejudgment interest. . .the Fifth Circuit ruled that
9 it was proper to include prejudgment interest in a restitution
10 award under the Act in order to fully compensate victims for
11 their losses. (Citation omitted) We agree with this analysis.")

12 The defendant began using the victim's funds on December
13 8, 2009 and the judgment was entered on May 17, 2011, so that
14 is the time period on which the government makes its
15 calculation of interest. The government proposes three
16 different interest calculations for the Court's consideration.

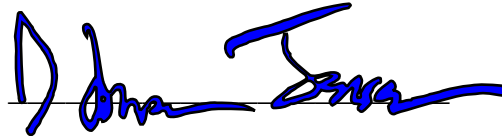
17 The first calculation uses the 5% interest rate requested
18 by the victim; the second option uses the Current Value of
19 Funds Rate which is commonly used in pre-judgment interest
20 calculations; and the third calculation uses the federal post-
21 judgment interest statute, 28 U.S.C. § 1961.

22 While there is authority in the Ninth Circuit to award
23 pre-judgment interest, United States v. Smith also stands for
24 the proposition that the district judge shall use his
25 discretion to consider, among other factors, the financial
26 resources of the defendant. Smith, 944 F.2d at 625. Having
27 considered all of the relevant factors before this Court, the
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1 Court finds that pre-judgment interest shall be awarded
2 utilizing the rate set out in 28 U.S.C. § 1961, for a total
3 pre-judgment interest payment of \$67.70. The judgment shall
4 reflect this amount in addition to the \$16,229.20 of
5 restitution.

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8 IT IS SO ORDERED.

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11 Dated: July 1, 2011



12 D. Lowell Jensen
13 United States District Judge
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